



**The Comptroller General
of the United States**

Washington, D.C. 20548

Timmerman

Decision

Matter of: Faulk Mechanical Contractors
File: B-235529
Date: August 9, 1989

DIGEST

Protest that contracting officer was improperly influenced in decision to waive awardee's insufficient bond and failure to acknowledge immaterial amendment is denied where the contracting officer acted in accordance with applicable procurement regulations and denies the alleged impropriety and there is no evidence corroborating the protest allegation.

DECISION

Faulk Mechanical Contractors protests the award of a contract to P.M.B.W., Inc., under invitation for bids (IFB) No. 83-115 issued by the Department of Veterans Affairs (VA) for the modernization of the boiler plant at the Tuskegee, Alabama Medical Center. Faulk asserts that the agency improperly waived the awardee's submission of an inadequate bond and its failure to acknowledge an amendment because of bias on the part of a contracting official.

We deny the protest.

At bid opening on April 6, 1989, the VA received four bids. P.M.B.W., Inc., was the low bidder with a price of \$1,135,324 and Faulk was the second low bidder with a bid of \$1,190,500. The contracting officer made an initial determination that P.M.B.W.'s bid was nonresponsive because it was accompanied by a bid bond for approximately 5 percent of the bid price instead of the 20 percent required by the IFB. The agency indicated to Faulk that it would receive award.

On April 24, the agency informed the protester that award would be made to P.M.B.W. because it had decided that the defect in the firm's bid bond could be waived pursuant to

G46183/139290

Federal Acquisition Regulation (FAR) § 28.101-4(b). That Regulation provides that noncompliance with a bid guarantee requirement should be waived when the amount of the bid guarantee submitted is less than required by the solicitation but is equal to or greater than the difference between the bid price and the next higher acceptable bid. P.M.B.W.'s bond for \$57,000 was greater than the \$55,176 difference between its bid and Faulk's so the agency determined that waiver was appropriate. In addition, the agency determined that the low bidder's failure to acknowledge IFB amendment No. 03 could be waived in accordance with FAR § 14.405(d)(2) because the amendment, which in substance deleted an Architect Engineer's note in the work statement suggesting additional work, did not impose any additional requirements on the bidders.

In its initial protest to our Office, Faulk argued that the contracting officer improperly waived the awardee's insufficient bond and its failure to acknowledge the amendment. The protester asserted that the contracting officer waived the requirements because the son of the contracting officer's supervisor works for an electrical subcontractor that the protester elected not to use. According to the protester, the day before it was notified that P.M.B.W. would receive the award, it received a telephone call from the agency's chief of engineering services who asked which electrical subcontractor Faulk had chosen. Faulk states that the engineer indicated that the protester should have used a particular subcontractor and that he was very disappointed that it was choosing to use another. After receiving the agency's response to its protest, Faulk agreed with the agency that the contracting officer could properly waive P.M.B.W.'s deficient bond and its failure to acknowledge the amendment. Faulk, however, still contends that the waivers were improperly motivated. Faulk states that an investigation of prior procurements will substantiate its assertion that the contracting officer's supervisor used her position to direct contracts to a particular firm.

The contracting officer denies any knowledge of the alleged conversation or of which firms would receive subcontract work until the protest was received after the award. In view of this denial, and since the contracting officer was acting in accordance with the applicable procurement regulations in waiving the awardee's submission of an insufficient bond and its failure to acknowledge the amendment, in the absence of additional evidence of impropriety, we have no basis upon which to question the waivers.

With respect to the allegations of improper conduct, however, we have been informed by the agency that Faulk's allegations have been referred to the VA's Office of the Inspector General which has responsibility for investigations concerning alleged fraud, waste and abuse and violations of the agency's standard of conduct regulations.

The protest is denied.



James F. Hinchman
General Counsel